



Michigan
House

Teachers' Tenure Law: Implications since Education Reform

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Public Act 100 of 2011

Amendments to the Teachers' Tenure Act (TTA)

DEFINITION OF DEMOTE

To reduce
compensation for
a school year by
more than an
amount
equivalent to 3
school days.



To suspend without pay for
15 or more consecutive
days, or to reduce
compensation by more
than an amount equal to
30 days. Does not include
end or reduction of
performance-based
compensation or reduction
of personnel or in
workweeks/ workdays.

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Public Act 100 of 2011

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STANDARD FOR DISCIPLINE

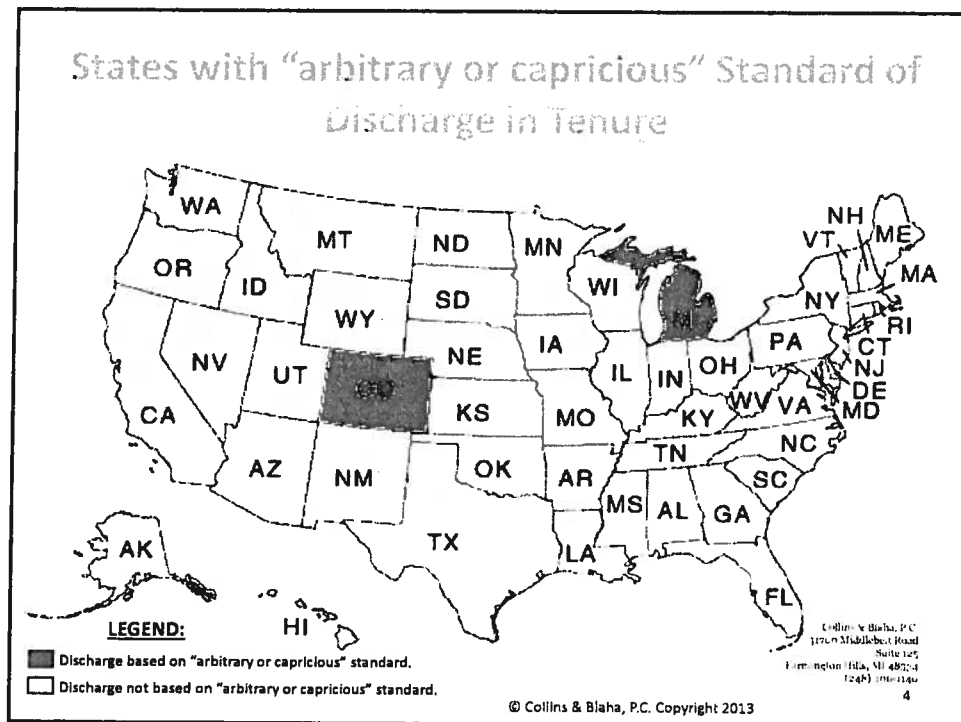
**Tenured teachers
may be discharged
or demoted for
*reasonable and just
cause.***

← **Former
Law** **New Law** →

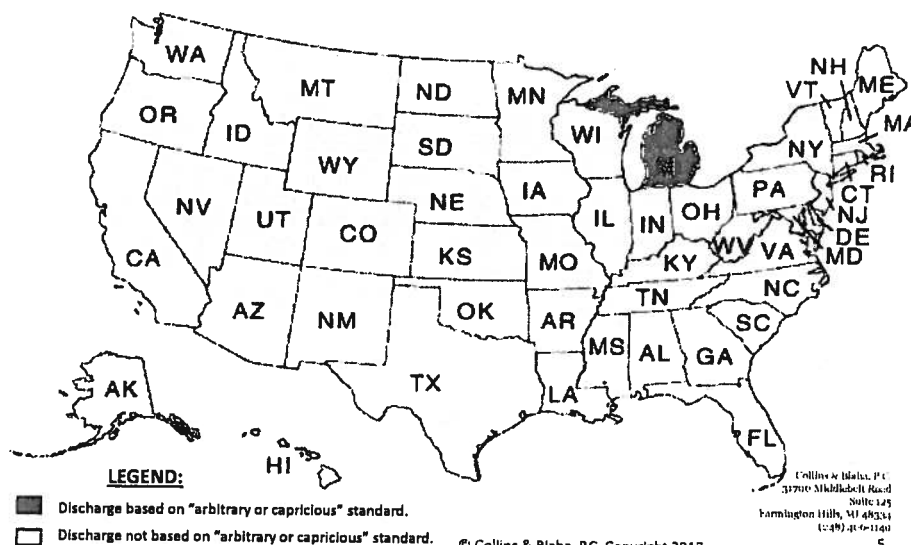
**Tenured teachers
may be discharged
or demoted for a
reason that is not
*arbitrary or
capricious.***

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Michigan is the Only State Where "arbitrary or capricious" is a Statutory Standard



Underlying cases that led to the "arbitrary or capricious" Standard in Michigan

- ***Davis v Jackson Public Schools***: The ALJ and the Commission reduced the teacher's discharge to a one-year suspension after the teacher permitted a minor student to spend the night at his home, made no attempt to contact the student's parents after she ran away, hugged and kissed the student on several occasions at school when she came into his room, and had discussions with the student about her sex life.
- ***Flowers v Detroit Public Schools***: The ALJ reduced the teacher's discharge to a 15-day suspension after she pawned a district-owned computer to fix a flat tire.
- ***Giffels v Millington Public Schools***: Teacher's discharge was reduced to long term suspension for submitting falsified receipts for meals during a school conference.
- ***Langworthy v Reed City Area Schools***: Teacher's discharge overturned in favor of a long term suspension after drug induced psychosis, domestic violence, and admission into a psychiatric unit.

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Tenure Commission's First Interpretation of "not arbitrary or capricious" Standard

CONA v AVONDALE, TTC 11-54:

- The Commission applied the following definition of **arbitrary**:
 "[F]ixed or done capriciously or at pleasure; without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgment; . . . without fair, solid, and substantial cause; . . . without cause based on the law. . . not governed by any fixed rules or standard."
- A decision is arbitrary and capricious if it is based on whim or caprice and not on considered, principled reasoning.
- The Commission stated that the "not arbitrary or capricious" standard was "highly deferential" to the controlling board.

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Role Tenure Commission Plays Under the "not arbitrary or capricious" Standard

- Even though the "not arbitrary or capricious" standard is "highly deferential" the Tenure Commission explained its role in the review of the Board's decision:
 - "... our review is not a mere formality and we are not required merely to rubber stamp the decision of a controlling board. Our responsibility in this case is to review the **quality** and **quantity** of the evidence and to determine if the decision to discharge appellant is the result of a deliberate, principled reasoning process supported by evidence."
- The Commission cited two principles for applying the "not arbitrary and capricious" standard:
 - (1) If there is a **reasoned explanation** for the decision, based on the **evidence**, the decision is not arbitrary or capricious.
 - (2) If a controlling board **overlooked** important evidence or **erred** in appreciating the significance of evidence, its decision may be determined to be arbitrary or capricious.

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Trend In Discipline Cases:

The Tenure Commission Strictly Reviews the Evidence and Character of Witnesses to Determine if Misconduct Took Place

- In *Sepanski v Detroit*, the Tenure Commission analyzed the testimony of three middle school students who witnessed their teacher call the class the N-word.
- The Commission minimized the student's testimony and placed great weight on the testimony of various teacher witnesses that some of the students were disruptive and dishonest, despite the ALJ's finding that the students' testimony, while inconsistent, were truthful and forthright.
- Further, the Commission faulted the district for not calling more student witnesses when over 50 students were in the class to hear the teacher's name calling and for including allegations in the tenure charges but failing to present evidence to establish those charges.
- The Tenure Commission concluded, after a careful review of the record, that the decision to discharge the teacher did not reflect a "principled assessment of the evidence as a whole."
- Teacher was reinstated with back pay.

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Okoro v. Detroit

- The district discharged the teacher for engaging in "conduct that was unprofessional" and in violation of district work rules, based on allegations that the teacher intentionally slapped a student in the face.
- The ALJ found that the teacher intentionally slapped the student and that the decision to discharge the teacher was not arbitrary or capricious.
- The Tenure Commission found that the evidence did not weigh in favor of an *intentional* slap. The district did not sustain its burden to prove the charges by a preponderance of the evidence. Rather, the Commission found that the evidence established that the slap could have been unintentional as the teacher was attempting to separate two students from fighting. The student had a red and swollen mark on his face, was very upset and emotional by the incident, fled the building and within minutes of the incident told a social worker that he had been slapped by his teacher.
- Because the district did not meet its burden that the teacher intentionally slapped the student, the Commission did not address whether the decision to discharge was "not arbitrary or capricious."
- The teacher was reinstated with back pay.
- No appeal has been filed in this case.

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Public Act 102 of 2011 Amendments to the Revised School Code

PROCEDURES FOR LAYOFF AND RECALL

Policy of Last In, First Out; probationary before tenured when making personnel decisions for reduction in force.



Under the Revised School Code, decisions for layoff and recall must be based on teacher effectiveness as measured by annual year-end performance evaluation.

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Tenure Commission's Jurisdiction over Layoff Decisions

- In a series of cases over 2012, the ALJs found that the Tenure Commission had no jurisdiction over cases involving layoff because it was removed from the TTA.
- Upon the filing of exceptions, the Commission overturned these decisions and found it had jurisdiction over decisions to layoff tenured teachers despite the fact that layoff and recall were removed from the TTA.
 - The Commission determined that it had jurisdiction in claims alleging that the layoff of a tenure teacher was subterfuge to discharge or demote the teacher without going complying with the procedural requirements of the TTA.
 - "... if a teacher shows that the layoff decision was made in bad faith in order to deny due process rights guaranteed by the Teachers' Tenure Act, then a claim of subterfuge has been established."
 - The Commission's stated that its jurisdiction over subterfuge claims stems from the general purpose of the Tenure Act and a teacher's right to challenge any decision of the controlling board under MCL 38.121. Because MCL 38.121 was not effected by the 2011 reforms, the Commission retains its jurisdiction over subterfuge claims.
 - In amending the TTA in 2011, the Legislature did not disturb the statutory provision guaranteeing to tenured teachers the right to continuous employment upon satisfactory completion of the probationary period. MCL 38.91(1).

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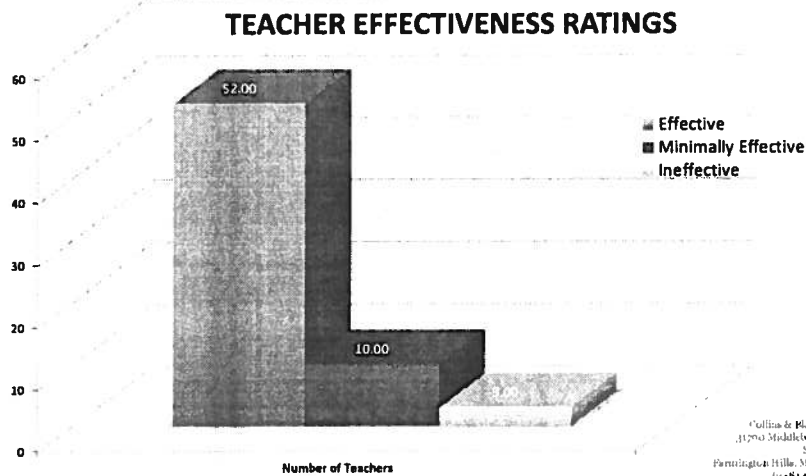
The Commission's Review of Performance Evaluations

- The Commission also determined that consideration of a district's performance evaluation system was "clearly appropriate" to the extent it is necessary to ensure that rights guaranteed in the TTA have not been violated. This inquiry would not contravene the Legislature's clearly stated intention that layoff decisions be based on retention of effective teachers. MCL 380.1249(1).
- The Commission opined that it has jurisdiction over claims that the layoff of a tenured teacher was not based on a proper assessment of the teacher's effectiveness but on a reason or reasons that contravene the protections guaranteed in the TTA, and that the Commission is duty-bound to assert jurisdiction.

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Analysis of One District Teacher Effectiveness Ratings of Laid Off Teachers 2012



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Cases Currently Pending Before the Michigan Court of Appeals regarding Tenure Reform

- **Discipline**

- *Sepanski v Detroit Public Schools*, Docket No. 314096
- *Ware v Southfield Public Schools*, Docket No. 313435
- *Cona v Avondale Public Schools*, Docket No. 310893
- *Halliburton v River Rouge School District*, Docket No. 312561

- **Layoff and Recall**

- *Baumgartner v Perry Public Schools*, Docket No. 313945
- *Aubert v Reed City Public Schools*, Docket No. 314158
- *Wright v Flint Board of Education*, Docket No. 314696

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Cases Addressing Right to Recall

- ALJ has determined that because the section of the TTA addressing recall to a vacancy after layoff was repealed, teachers no longer have a right to recall and the Commission does not have jurisdiction over cases involving recall.
- ALJ has also determined that a teacher does not have a “vested right” to have the language of the TTA that was in place prior to the 2011 reforms apply to him or her for the balance of his or her career simply because he or she obtained tenure prior to the reforms.
- Currently, a case on recall rights is before the Michigan Court of Appeals.

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Overview

- In the areas of displacing probationary teachers, recall rights to the first vacancy after layoff, and teacher demotion, the goals of maintaining effective teachers in the classroom have advanced as district's become more acclimated with the changes.
- In the areas of discipline and layoff, several cases are on appeal to the Michigan Court of Appeals challenging the Commission's application, analysis, and jurisdiction under the reforms.

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DISPLACING A PROBATIONARY TEACHER

**Tenured teacher
always displaces a
probationary
teacher who is
certified and
qualified to serve
in that position.**



**A probationary
teacher rated
effective or highly
effective shall not be
displaced by a
tenured teacher
solely because that
teacher has obtained
tenure.**

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 Amendments to the Teachers' Tenure Act (TTA)

RECALL RIGHT TO FIRST VACANCY

For a period of 3 years after termination of services, tenured teacher had to be appointed to first vacancy for which he or she was certificated and qualified.



Article IV, Sec. 5 was **repealed**. Tenure Act no longer limits right of recall to a specific time period.

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